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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of

JAMES M. CANTONIS

Serial No.: 09/715,073

Art Unit: 1744

Filed: November 20, 2000

Examiner: L. Cole

For: ELONGATED CHAMOIS PAD

REQUEST FOR REINSTATEMENT OF APPEAL

To the Commissioner of Patents and Trademarks

Sir:

In response to the office action mailed May 4, 2004, Applicant respectfully requests reinstatement of the Appeal in this case. A Substitute Appeal Brief, in triplicate, is being concurrently filed under separate cover.

No fees are required for reinstating this appeal and for the Substitute Appeal Brief because all required fees have been previously paid.

Respectfully,

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August 4, 2004

09/715,073



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**SUBSTITUTE APPEAL BRIEF**

To the Commissioner of Patents and Trademarks

Sir:

**REAL PARTY IN INTEREST**

ACME SPONGE AND CHAMOIS CO., INC. is the real party in interest of this application by virtue of an assignment filed November 20, 2000 and recorded on reel/frame 011318/0939.

**RELATED APPEALS AND INTERFERENCES**

No other related appeals and interferences are pending.

**STATUS OF CLAIMS**

Claims 1-58 were finally rejected over art of record.

A copy of the appealed claims is appended hereto in the Appendix.

### STATUS OF AMENDMENTS

No amendments were filed after the final rejection.

### SUMMARY OF THE INVENTION

The invention (Specification pages 4-6; Figures 1-6) relates to an elongated chamois pad. In a preferred embodiment of the present invention four small rectangular pieces of chamois each being about nine and one-half inches in length and about six and one-quarter inches wide have die cut or punched holes 6 shown spaced on one-half inch centers as represented in Figure 1. The four pieces of chamois are stitched together to form a pair of elongated pieces of chamois with outward facing seamed edges 8 in the center of the resulting elongated sheet of chamois 1 (specification page 4, lines 10-17).

The preferred embodiment uses chamois made from sheep-skin. The smaller pieces are more plentiful and less expensive than much larger pieces. Preferably sheep-skin chamois is used for the cover. Alternatively, man-made chamois-like cloth may be used as a covering (specification page 4, lines 18-22).

In the preferred embodiment shown in Figure 2, the cover is a single large rectangular piece of chamois 1, which preferably measures about thirty seven and three-quarter inches in length and about six and one-quarter inches in width. The rectangular sheet in Figure 2 has opposite ends 2 and sides 3. By folding the rectangular sheet end to end about a center 4, the rectangular sheet is transformed into a pocket made of a single rectangular

sheet having two equal halves joined together along the fold axis and stitched 7 together along the side edges 3 (specification page 4, lines 23-25 to page 5, lines 1-6).

In Figure 3 a large piece of chamois 1 having a length of about eighteen and three-quarter inches and a width of about twelve and one-half inches is folded in half medially along one side and stitched 7 closed on the opposing long side edge 3 and one end 2, forming a pocket 11 in which to insert the elongated poly sponge (specification page 5, lines 7-12).

Referring now to Figure 4, the rectangular pieces of chamois 1 of Figure 1 are placed one on top of the other so that the side edges 3 and end edges 2 line up and the seamed edges 8 from joining the two smaller rectangular pieces of chamois faces outwardly (specification page 5, lines 13-16).

The two longer parallel edges 3 are stitched 7 and one end edge 2 is stitched 7, forming a pocket 11. The pocket is then preferably turned inside out so that the outward facing seamed edges 7 from Figure 4 is inside the pocket as shown in Figure 5. However, the invention is not limited this joining of the edges. Other joints, such as along the shorter edges first and then the longer edges and the like, are within the scope of this invention (specification page 5, lines 17-24).

Also shown in Figure 5, the long poly sponge 12 is inserted into the pocket 11. The seamed edges 8 having been turned toward the inside of the pocket leaves smooth seams 5 on the outside

surfaces of the invention (specification page 5, lines 25-26 to page 6, lines 1-2).

Figure 6 shows the finished product with an outer surface of chamois 1 with die cut or punched holes 6 and smooth seams 5. It is understood that the chamois completely covers the poly sponge material and that the remaining end of the rectangular pocket 11 from Figure 5 is stitched shut end 13 to prevent the sponge from slipping out of the chamois pocket (specification page 6, lines 3-8).

Figure 7 is a view of the top or bottom surface of the new elongated wringable chamois pad. This view shows the outwardly stitched shut end 13 and the edges 3 and end 9 and seam 5 which stitching faces toward the inside of the pocket, creating smooth surfaces at the seams where the chamois pieces are joined (specification page 6, lines 9-13).

Figure 8 is a view of the new chamois pad showing the outwardly stitched shut end 13 (specification page 6, lines 14-15).

Figure 9 is a view of the new chamois pad showing the smooth seam 5 on end 9 created by the inwardly facing stitching (specification page 6, lines 16-17).

Figure 10 is a side view of either side of the new chamois pad showing the wringable elongation and the smooth seam 5 on side edge 3 and perpendicularly in the middle of this view of the invention created by the inwardly facing stitching (specification page 6, lines 18-21).

### ISSUES

Whether claims 1, 4-9, and 18 are patentable under 35 U.S.C. 102(b) over Martin et al. (US 5,671,498)?

Whether claims 39-56 are patentable under 35 U.S.C 102(b) over Giallourakis (US 4,821,360)?

Whether claims 1-3, 5-9, 17-19, and 21 are patentable under 35 U.S.C. 102(b) as well as under 35 U.S.C. 103(a) over Sewell (US 3,083,392)?

Whether claims 1, 5-11, 13, 14, 18, 22-23, 27-38, 57, and 58 are patentable under 35 U.S.C. 102(b) as well as under 35 U.S.C. 103(a) over Giallourakis (US 4,821,360)?

Whether claim 12 is patentable under 35 U.S.C. 103(a) over Giallourakis?

Whether claim 15 is patentable under 35 U.S.C. 103(a) over Martin (US 5,671,498)?

Whether claim 16 is patentable under 35 U.S.C. 103(a) over Sewell?

Whether claim 16 is patentable under 35 U.S.C. 103(a) over Giallourakis?

Whether claim 20 is patentable under 35 U.S.C. 103(a) over Sewell?

Whether claims 24 and 25 are patentable under 35 U.S.C. 103(a) over Giallourakis and Hale (US 5,918,341)?

Whether claim 26 is patentable under 35 U.S.C. 103(a) over Giallourakis and Sewell?

### GROUPING OF CLAIMS

Each claim is separately patentable. The claims do not stand or fall together for the reasons presented below.

### ARGUMENTS

The present claims are patentable under 35 U.S.C. 102(b).

For an invention to be anticipated, it must be demonstrated that each and every element of the claimed invention is present in the "four corners" of a single prior art, either expressly described therein or under the principle of inherency. Lewmar Marine Inc. v Barient Inc., 3 USPQ2d 1766, 1767-1768 (CAFC, 1987). The absence from prior art reference any claimed element negates anticipation. Kloster Speedsteel AB v. Crucible, Inc., 230 USPQ 81, 84 (Fed. Cir. 1986).

Claims 1, 4-9, and 18 are patentable under 35 U.S.C. 102(b) over Martin et al. (US 5,671,498) ("Martin").

The present invention, as exemplified by claim 1, generally defines a wringable pad that has an absorbent material enclosed within a cover that has holes for expressing contents of the absorbent material when wringing the pad by twisting the elongated pad along the length of the pad.

Martin relates to a skin exfoliating scrubbing device for removing scales from a surface or an abrasive scrubbing device for cleaning utensils and the like. The device has a first foam layer which can be gripped by the hand of a user and a second woven synthetic layer (polyester netting) in contact with the

first layer for abrading a surface with the second layer by the user holding the first layer.

Martin mandates the polyester netting because it is "hydrophobic" (see, for example column 5, lines 31-43). Martin repeatedly mandates that at least one of the two layers should be made for providing a hand grip. Therefore Martin's pad would be squeezable and that essentially teaches away from the claimed "wringable" pad.

Martin describes that the foam pad may be encased in the second layer or may be adhered to one another in two layers. Martin teaches that the outer layer/second layer may be a mesh with fine mesh openings which provide "a mildly abrasive working surface" (see, for example, column 3, lines 25-33; column 5, lines 55-60). The only way the Martin device can work, to remove scales/dried skin, is by having at least the mandated mildly abrasive working surface. That has nothing to do with the claimed invention.

Contrary to the Examiner, Martin does not describe nor teach at least one rectangular piece forming the cover. The Examiner relies on Martin, column 5, lines 64-66 where Martin teaches that the sleeve has a top panel separated by a distance from the bottom panel, i.e., at least two pieces.

Martin does not describe, teach or suggest an elongated wringable pad that has an absorbent material enclosed within a cover and the cover having holes for expressing contents of the absorbent material when wringing the pad. Martin cannot provide



the claimed device because Martin requires that the foam material must be removed from the woven filament abrasive cover for use on a surface and therefore Martin cannot have anything to do with a wringable cover enclosing the wringable foam that can both be simply wrung out after use.

Lacking all the claimed elements the reference cannot anticipate the present claims.

Claim 4 describes that the holes are spaced on one-half inch centers of the cover. Martin is silent on those features. The Examiner deduces that Martin requires a mesh size of 1/16 inch (column 5 line 46) and "therefore every eighth hole is one half inch interval from another" (office action page 2, paragraph 1, lines 7-8). The examiner is adding non-existent language to claim 4 that the holes are at intervals from each other only because Martin does not teach the actual claim language of claim 4. Besides, the examiner is confusing "mesh" of a polyester netting with the claimed openings on the cover defined in claim 4.

Claim 5 describes the absorbent material is an elongated poly sponge that can be wrung out with the cover. Martin provides a rectangular foam of any sponge-type material having a distance d1 between an upper and lower surface that is equal to or grater than distance d2 between the top and bottom panels of the polyester netting sleeve. Martin requires that small spring constant of the foam material for being squeezable when used for

abrading a surface. Therefore, martin does not and cannot teach an elongate sponge.

Claim 6 defines the one piece as being at least one rectangular sheet. However, Martin requires at least two, if not more, rectangular spaced pieces.

Claim 7 adds to claim 6 that the sheet has opposite side- and end-edges. Martin's plurality of sheets may have end and side edges but not the claimed at least one sheet with the edges.

Claim 8 adds a pocket formed by joints on the end and side-edges of the one sheet for reeving and holding the absorbent material. Martin requires end stitches and side stitches to join the top and bottom panels.

Claim 9 adds that the joints are seams formed by stitches. Martin does not have the edges and side of the at least one sheet being joined but rather top and bottom panels joined by adhesion or stitching.

To be anticipating, a prior art reference must disclose "each and every limitation of the claimed invention[, ]... must be enabling[, ] and must describe...[the] claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention." In re Paulsen, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

Claims 39-56 are patentable under 35 U.S.C 102(b) over Giallourakis (US 4,821,360) ("Giallourakis").

The present invention, exemplified by claim 39, describes an elongated wringable pad comprising an absorbent material, a cover

enclosing the absorbent material, the cover comprising first and second elongated opposite side portions disposed between top and bottom elongated portions, and first and second opposite end portions disposed between the top and bottom elongated portions and between the first and second elongated side portions, the absorbent material having a complementary shape for fitting within the cover, and the cover having a plurality of openings for wringing-out contents of the pad by twisting along the length of the pad.

Giallourakis relates to a pad in which a sponge is removably disposed in a knitted cover of loosely knit material with a mouth in the cover for easily removing the sponge. The sponge gives shape to the cloth cover and prevents wrinkles and folds on the cover when the sponge is placed within the cover. The cover is reversible for using the inside and the outside during polishing of a surface.

Giallourakis does not describe or teach a wringable pad that has an absorbent material enclosed within a cover that has holes for expressing contents of the absorbent material when wringing the pad by twisting along a length of the pad.

The Examiner has failed to show a teaching, suggestion or inherence, anywhere in the reference, of plural holes in the cover that encloses the pad and helps express fluids when the pad and cover are wrung out after use.

"To establish inherency, the extrinsic evidence 'must make it clear that the missing descriptive matter is necessarily

present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.'" In re Robertson, 48 USPQ2d 1949, 1951 (Fed. Cir. 1999) quoting from Continental Can Co. v. Monsanto Co., 20 USPQ2d 1746, 1749 (Fed. Cir. 1991). "Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. Id. 20 USPQ2d at 1749.

Claims 40-47 define the locations of the plurality of openings. Claim 40 adds that the plurality of openings are disposed in the top portion of the cover; in claim 41 adds the plurality of openings are disposed in the bottom portion of the cover; in claim 42 the plurality of openings are disposed in the first side portion of the cover; in claim 43 the plurality of openings are disposed in the second side portion of the cover; in claim 44 the plurality of openings are disposed in the first and second elongated side portions of the cover; in claim 45 the plurality of openings are disposed in the top and bottom elongated portions of the cover; in claim 46 the plurality of openings are disposed in the first and second opposite end portions; and in claim 47 the plurality of openings are disposed in the portions of the cover selected from the group consisting of the top elongated portion, the bottom elongated portion, the first elongated side portion, the second elongated side portion, the first end portion, the second end portion, and combinations thereof. None of the features of each of claims 40-47 can exist

in Giallourakis because the reference mandates a loosely knit cover material (see, for example, 5) for the entire cover.

Claims 48-56 define the connections of the cover. Claim 48 adds that the cover further comprises connections and claim 49 describes the connections are seams having seam edges on the cover turned inwards towards the absorbent material and having smooth outer surfaces on all the portions of the cover. Claim 50 defines that the connections are on the first elongated side portion; in claim 51 the connections are on the second elongated side portion; in 52 the connections are on the first end portion; in claim 53 the connections are on the second end portion; in claim 54 the connections are on the top elongated portion; in claim 55 the connections are on the bottom elongated portion; and in claim 56 the connections are disposed on the portions of the cover selected from the group consisting of the top elongated portion, the bottom elongated portion, the first elongated side portion, the second elongated side portion, the first end portion, the second end portion, and combinations thereof. Giallourakis has a cover with an open end and two seams along two peripheral edges. Giallourakis does not describe or teach the claimed connections being along the different sides defined in claims 48-56 for the elongated wringable pad of the claimed invention.

Lacking the crucial claimed elements, the reference cannot anticipate the present claims.

Since the cited reference does not disclose all the elements of the present invention, the reference cannot anticipate the present invention. ... lacking an element of the claims, the reference cannot anticipate the invention. Carmen Indus., Inc. v. Wahl, 220 USPQ 481, 485 (Fed. Cir. 1983).

**The present claims are patentable under 35 U.S.C. 103(a).**

In considering the patentability of the present invention, it is requested that the Board consider the invention as a whole, consider the scope and content of the prior art as a whole, consider the differences between the claims at issue and the prior art, and consider the level of ordinary skill in the art to which the invention pertains at the time the invention was made. Graham v. John Deere Co., 148 USPQ 459, 467 (1966).

**THE INVENTION AS A WHOLE**

The invention considered as a whole is best described by the appended claims.

**PRIOR ART AS A WHOLE**

The prior art to which the invention pertains is typified by the references of record.

**DIFFERENCES BETWEEN THE INVENTION AND THE PRIOR ART**

Each of the present claims defines unique features and each is individually patentable over the prior art.

The test in reviewing rejections under 35 U.S.C. 103 in which the examiner has relied on teachings of several references, is whether references, viewed individually and collectively, would have suggested claimed invention to a person possessing ordinary skill in the art, and citing references which merely indicate that isolated elements and/or features recited in the claims are known is not a sufficient basis for concluding that combination of the claimed elements would have been obvious. Ex parte Hiyamizu, 10 USPQ2d 1393-1395 (Board of Patent Appeals and Inter., 1988); In re Kaslow, 217 USPQ 1089 (Fed. Cir. 1983); In re Deminski, 230 USPQ 313 (Fed. Cir. 1986).

Claims 1-3, 5-9, 17-19, and 21 are patentable under 35 U.S.C. 102(b) as well as under 35 U.S.C. 103(a) over Sewell (US 3,083,392) ("Sewell").

Claim 1 describes an elongated wringable pad comprising a cover and an absorbent material in the cover, at least one rectangular piece forming the cover, plural holes in the piece, the pad having a length at least three times greater than a width of the pad to wring-out contents of the pad by twisting along the length of the pad.

Sewell relates to a sponge and chamois combination (see Figure 1 and related description) in which a first sponge block 1 is joined to a second sponge block by glue. The second sponge block 2 is formed with a sponge joined to a chamois by water proof glue. Perforations 4 are provided on the skin 3 of the second sponge block 2 for draining water after using the joined

sponge blocks for washing. Water is squeezed out and the chamois covered second block side is used to dry the surface.

Sewell provides another combination in Figure 2 in which the sponge 5 is joined to the cover sponge 6 with the cover having outwardly extending flange 8. An additional strip 10 of chamois is glued to the block 5 extending outwardly and the cover 7 is anchored to the block 8. Drain passageways are provided between the blocks by anchoring flexible tubes between the strip 10 and the flange 8.

Claim 2 adds that the holes are die-cut holes and claim 3 adds that the holes are punched holes, which is not taught nor suggested by Sewell.

Claim 5 adds that the absorbent material is an elongated poly sponge. Sewell does not teach nor suggest an elongated wringable pad having a cover enclosing the elongated poly sponge.

Claim 6 adds that the at least one piece is at least one rectangular sheet. Sewell anchors two blocks of sponges with one block covered with material such as chamois skin and folded under the second block before anchoring the second block to the first block. that has nothing to do with the elongated wringable pad with its rectangular sheet forming the cover enclosing the sponge.

Claim 7 adds that the at least one rectangular sheet has opposite end-edges and side-edges and claim 8 adds a pocket formed by joints along the side-edges and/or end-edges of the at least one rectangular sheet for receiving and holding the



absorbent material in the pocket. Claim 9 adds the joints are seams formed by stitches. Claim 17 adds that the at least one piece is a chamois piece. Sewell anchors the chamois skin between the two blocks of sponges with waterproof glue. Nothing in the reference teaches nor suggest sewing the side-edges/end-edges of the sheet and receiving the sponge within the cover.

Sewell further provides a block of sponge 12 completely covered by a covering material such as chamois 13 and provides passageways formed between the joined margins 14 of the covering material. The material may be sewed or glued to the sponge block. Tubular material are positioned between the joined margins to form passageways 15 to remove moisture from the block.

Claim 18 adds plural pieces forming the cover and claim 19 defines the plural pieces are chamois pieces. Claim 21 the plural pieces are of man-made chamois cloth material. Sewell does not teach nor suggest those features.

Nothing in Sewell describes, teaches or suggests a pad with a cover enclosing an absorbent material with the cover having holes for expressing contents from the pad. The Examiner picks and chooses different features from different embodiments in Sewell to negate the claimed elements even though Sewell neither describes, suggests, teaches nor inherently provides those claimed features in any of the Sewell Figures 1, 2, and 3.

See In re Meng, 181 USPQ 94, 97 (CCPA 1974), wherein the Court held:

"Of course the invention seems simple, after the fact. But simplicity, particularly in an old and crowded art, may

argue for rather than against patentability. In re Sporck, 133 USPQ 360 (CCPA 1962). Progress in the crowded arts, usually made in small increments, is as important as it is in arts at the pioneer stage. In re Hummer, 113 USPQ 66 (CCPA 1957). The Constitution envisages and seeks progress in the 'useful arts,' not just those more esoteric or scientific."

Nothing in the references teaches, suggests or motivates one of ordinary skill in the art to arrive at the claimed invention in the manner proposed by the Examiner.

Claims 1, 5-11, 13, 14, 18, 22-23, 27-38, 57, and 58 are patentable under 35 U.S.C. 102(b) as well as 35 U.S.C. 103(a) over Giallourakis (US 4,821,360) ("Giallourakis").

As pointed out above, Giallourakis does not describe, teach or suggest the claimed invention. Therefore the reference cannot render the claimed features obvious.

Giallourakis provides a foam material removably disposed inside a polishing cloth cover so that the sponge can be removed and used and the cloth cover can be used on the inside and the outside for polishing surfaces.

Claim 1 describes an elongated wringable pad comprising a cover and an absorbent material in the cover, at least one rectangular piece forming the cover, plural holes in the piece, the pad having a length at least three times greater than a width of the pad to wring-out contents of the pad by twisting along the length of the pad.

Giallourakis does not teach nor suggest an elongated wringable pad comprising an absorbent material, a cover enclosing the absorbent material, the cover comprising first and second

elongated opposite side portions disposed between top and bottom elongated portions, and first and second opposite end portions disposed between the top and bottom elongated portions and between the first and second elongated side portions, the absorbent material having a complementary shape for fitting within the cover. Furthermore, totally absent from Giallourakis is the cover having a plurality of openings for wringing-out contents of the pad by twisting along the length of the pad. Thus, the reference cannot anticipate nor render obvious the claimed invention.

That [the prior art] might incorporate elements which could be used in appellants' system does not render appellants' claims obvious when there is no suggestion of using these elements in substantially the same manner as appellants use them. In re Donovan, 184 USPQ 414, 421 (CCPA, 1975).

Claim 5 adds that the absorbent material is an elongated poly sponge. Giallourakis does not teach an elongated wringable sponge in the cover.

Claim 6 adds that the at least one piece is at least one rectangular sheet. Claim 7 adds that the at least one rectangular sheet has opposite end-edges and side-edges. Claim 8 adds a pocket formed by joints along the side-edges and/or end-edges of the at least one rectangular sheet for receiving and holding the absorbent material in the pocket. Claim 9 adds the joints are seams formed by stitches. Claim 10 adds that the pocket has the seams inward facing and smooth outer surfaces.

Giallourakis does not teach nor suggest the wringable elongated pad with a cover enclosing an absorbent material and the cover having edges joined by stitches. Giallourakis has an open-mouthed polishing pad.

Claim 11 adds that the at least one rectangular sheet has a fold between the end-edges about an axis forming a pocket having equal halves joined together along the side-edges. Claim 13 adds that the at least one rectangular sheet has a fold medially along one side-edge and one end-edge forming a pocket having the opposite side-edges joined to each other. Claim 14 adds that the at least one rectangular sheet has a fold medially along one end-edge forming a pocket having the opposite side-edges joined together. Nothing in the reference defines all those claimed features nor would it have been obvious from the reference teachings.

Claim 18 adds plural pieces forming the cover and claim 19 defines the plural pieces are chamois pieces. Claim 22 adds that the plural pieces are at least four pieces forming the cover and claim 23 adds the pieces are rectangular pieces. Giallourakis does not render obvious those claimed features because the reference does not relate to elongated wringable pads.

Claim 27 defines connections for connecting the four pieces and claim 28 adds that the connections are stitched seams. Giallourakis does not have the plural pieces as claimed.

Claim 29 defines that the seams are formed along side-edges and end-edges of the at least four rectangular pieces positioned

as paired-pieces placed on top of one another for alignment of the side-edges and end-edges for receiving stitches to join each of a pair of two smaller rectangular pieces to the other. Giallourakis does not teach nor suggest the plurality of pieces and therefore cannot have the stitches and alignments of claim 29.

Claim 30 adds that the seams are formed along two longer parallel side-edges and one end-edge. Claim 31 adds a pocket formed by the stitched seams. Claim 32 adds that the pocket has the connections facing inwards and smooth outer surfaces after turning the pocket inside-out. Giallourakis does not teach nor suggest the claimed wringable elongated pad with the defined seams.

Claim 33 defines the absorbent material is an elongated poly sponge inserted into the pocket, which is not taught nor suggested by the reference.

Claim 34 adds the at least four pieces with the seams form a pair of elongated pieces of chamois with outward facing seams, said seams being in a center of an elongated sheet of chamois formed by the connections of the four pieces together prior to insertion of the absorbent material. Claim 35 defines a pocket formed when the at least four pieces joined by the seams are turned inside-out, and wherein the pocket has the seams facing inwards and smooth outer surfaces. Claim 36 adds that the cover is a pocket having inward facing joints and smooth outer

surfaces. Giallourakis does not have plural pieces nor the central connections as defined in claim 34.

Claim 37 adds that the cover completely covers the absorbent material and edges of the at least one piece are joined together to prevent the absorbent material from slipping out of the pocket. Giallourakis requires an opening to remove the sponge from the mesh cover.

Claim 38 defines that at least one of the edges joined together has outward facing seams, which is absent in the reference.

Claim 57 adds a length of the pad is at least three times greater than a width of the pad, which is absent in Giallourakis.

Claim 58 adds that lengths of the first and second elongated side portions and of the top and bottom portions are at least three times greater than widths of the first and second end portions. Giallourakis does not teach nor suggest that feature.

The examiner has merely used the claimed invention as a springboard to hold that unrelated elements in the references actually teach or suggest the claimed features. However, that hindsight construction cannot justify an obviousness holding unless there is a teaching or suggestion within the reference itself.

The Federal Circuit mandates that the reference teachings be considered as a whole, rather than picking and choosing claimed elements to negate the claimed invention. "In considering the patentability of the present invention, the Board should consider

the invention as a whole, consider the scope and content of the prior art as a whole, consider the differences between the claims at issue and the prior art, and consider the level of ordinary skill in the art to which the invention pertains at the time the invention was made." Graham v. John Deere Co., 148 USPQ 459, 467 (1966).

Claim 12 is patentable under 35 U.S.C. 103(a) over Giallourakis.

As pointed out above, Giallourakis does not describe, teach or suggest the claimed invention. Therefore the reference cannot render the claimed features obvious.

Giallourakis provides a foam material removably disposed inside a polishing cloth cover so that the sponge can be removed and used and the cloth cover can be used on the inside and the outside for polishing surfaces.

The reference does not teach nor suggest the features of claim 12 which adds to claim 7 that the rectangular sheet that forms the encasing has a fold between the side edges so that the sheet is folded about an axis and joined at the edges to form the encasing for receiving and enclosing the sponge.

Citing In re Gordon, 221 USPQ, 1127, the court pointed out, "the mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification". In re Fritch, 23 USPQ2d 1783, 1784 (CAFC, August 1992).

Claim 15 is patentable under 35 U.S.C. 103(a) over Martin.

As pointed out earlier, Martin does not teach or suggest the claimed invention.

Claim 15 describes the cover having a length of about 37 3/4" and a width 6 1/4". Martin does not describe, teach, suggest or show in any figure the claimed dimensions, even hypothetically. The examiner's contention that the cover may extend a length to cleanse the back and that "the length of the cover is ... at least three times greater than the width of the pad" is a misinterpretation of claim 15 which has nothing to do with cover:pad ratios.

That [the prior art] might incorporate elements which could be used in appellants' system does not render appellants' claims obvious when there is no suggestion of using these elements in substantially the same manner as appellants use them. In re Donovan, 184 USPQ 414, 421 (CCPA, 1975).

Claim 16 is patentable under 35 U.S.C. 103(a) over Sewell.

As pointed out earlier, Sewell does not teach or suggest the claimed invention.

Claim 16 provides that a length of the cover is about eighteen and three-quarter inches and a width is about twelve and one-half inches.

Sewell relates to a sponge and chamois combination (see Figure 1 and related description) in which a first sponge block 1 is joined to a second sponge block by glue. The second sponge



block 2 is formed with a sponge joined to a chamois by water proof glue. Perforations 4 are provided on the skin 3 of the second sponge block 2 for draining water after using the joined sponge blocks for washing. Water is squeezed out and the chamois covered second block side is used to dry the surface. Nothing in Sewell describes, teaches or suggests a pad with a cover enclosing an absorbent material with the cover having holes for expressing contents from the pad, in which the cover is sheep-skin chamois.

Citing In re Gordon, 221 USPQ, 1127, the court pointed out, "the mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification". In re Fritch, 23 USPQ2d 1783, 1784 (CAFC, August 1992).

Claim 16 is patentable under 35 U.S.C. 103(a) over Giallourakis.

As pointed out above, Giallourakis does not describe, teach or suggest the claimed invention. Therefore the reference cannot render the claimed features obvious.

Giallourakis provides a foam material removably disposed inside a polishing cloth cover so that the sponge can be removed and used and the cloth cover can be used on the inside and the outside for polishing surfaces.

The reference does not teach nor suggest the features of claim 16 which provides that a length of the cover is about

eighteen and three-quarter inches and a width is about twelve and one-half inches.

The Board, in Ex parte Levengood, 28 USPQ2d 1300, 1301 (Board of App. and Inter. 1993), observed:

"The only suggestion for the examiner's combination of the isolated teachings of the applied references improperly stems from appellant's disclosure and not from the applied prior art. In re Ehrreich, 200 USPQ 504 (CCPA 1979). At best, the examiner's comments regarding obviousness amount to an assertion that one of ordinary skill in the art would have been able to arrive at the appellant's invention because he had the necessary skills to carry out the requisite... steps. This is an inappropriate standard for obviousness."

The above is true for the present case.

Claim 20 is patentable under 35 U.S.C. 103(a) over Sewell.

As pointed out earlier, Sewell does not teach or suggest the claimed invention.

Claim 20 states that the chamois is sheep-skin chamois.

Sewell relates to a sponge and chamois combination (see Figure 1 and related description) in which a first sponge block 1 is joined to a second sponge block by glue. The second sponge block 2 is formed with a sponge joined to a chamois by water proof glue. Perforations 4 are provided on the skin 3 of the second sponge block 2 for draining water after using the joined sponge blocks for washing. Water is squeezed out and the chamois covered second block side is used to dry the surface. Nothing in Sewell describes, teaches or suggests a pad with a cover enclosing an absorbent material with the cover having holes for

expressing contents from the pad, in which the cover is sheep-skin chamois.

It is impermissible to use an applicant's claim as a springboard for hunting through the prior art for the claimed elements and for combining the found elements as claimed in the application. In re Vaeck, 20 USPQ2d 1438 (Fed. Cir. 1991).

Claims 24 and 25 are patentable under 35 U.S.C. 103(a) over Giallourakis and Hale (US 5,918,341) ("Hale").

As pointed out above, Giallourakis teaches away from the claimed invention. Therefore, any further combination with other references would also lead away from the present claims.

Claim 24 defines each piece is about nine and one-half inches in length. In claim 25 each piece is about six and one-quarter inches wide.

Hale relates to a controlled fold cleaning cloth that has to be folded as specified in the reference to achieve its optimal use. Hale provides a sleeve of the foldable material and teaches a folding pattern for using each panel of the folded sleeve. That has nothing to do with the claimed invention which provides a cover having lengths much greater than a width as defined in claim 16.

Moreover, there is no showing as to where in the references there is a teaching or a suggestion to adapt the Giallourakis removable sponge within the Hale foldable sleeve and arrive at the claimed invention.

In deciding that a novel combination would have been obvious, there must be supporting teaching in the prior art. There is no suggestion or motivation in the prior art to combine the elements as done by the present invention and hence the claims cannot be rendered obvious. In re Newell, 13 USPQ2d 1248, 1250 (CAFC, 1989).

Claim 26 is patentable under 35 U.S.C. 103(a) over Giallourakis and Sewell.

As pointed out above, each of Giallourakis and Sewell teaches away from the claimed invention. Therefore, any further combination with other references would also lead away from the present claims.

Claim 26 defines that the pieces are of chamois material.

Sewell has been described earlier. Giallourakis has also been described above. The two references do not teach nor suggest the claimed invention. There is no showing as to where there is a motivation or a suggestion within the references to effect a combination as proposed by the Examiner. Therefore, their combined teachings also cannot render any claimed feature obvious. Hindsight reconstruction using the present invention as a guide cannot form a sound basis for an obviousness rejection.

"It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." In re Fritch, 23 USPQ2d 1783, 1784 (CAFC, August 1992), quoting from In re Gorman, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991).

"This court has previously stated that one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." Id. quoting from In re Fine, 5 USPQ2d 1600 (CAFC, 1988).

Nothing in all the references, either singly or in combination, teaches or suggests the claimed features. Therefore, the references cannot anticipate nor render obvious the present invention as claimed.

In In re Fine, 5 USPQ2d 1596, 1599 (Fed. Cir 1988), the Court further observed:

"Because neither [reference], alone or in combination, suggests the claimed invention, the Board erred in affirming the Examiner's conclusion that it would have been obvious to substitute the [secondary reference features] in the [primary system]. The [references] disclose, at most, that one skilled in the art might find it obvious to try the claimed invention. But whether a particular combination might be 'obvious to try' is not a legitimate test of patentability. In re Geiger, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987); In re Goodwin, 198 USPQ 1, 3 (CCPA 1978).

Thus, there is no prima facie case of obviousness with respect to any of the claims.

#### **LEVEL OF ORDINARY SKILL IN THE ART**

A person having ordinary skill in the art is an artisan being taught the reference teachings.

#### **SUMMARY**

Each of the present claims is patentable under 35 U.S.C. 102(b) over the prior art of record.

When considering the present invention as a whole and the prior art to which the invention pertains as a whole, when considering the differences between the present invention and the prior art, and when considering the level of ordinary skill in the art to which the invention pertains, it is clear that the invention would not have been obvious under 35 U.S.C. 103(a) to a person having ordinary skill in the art at the time the invention was made.

**CONCLUSION**

Reversal of the Examiner and allowance of all the claims are respectfully requested.

Respectfully,



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## APPENDIX

### **Appealed Claims**

1. An elongated wringable pad comprising a cover and an absorbent material in the cover, at least one rectangular piece forming the cover, plural holes in the piece, the pad having a length at least three times greater than a width of the pad to wring-out contents of the pad by twisting along the length of the pad.
2. The pad of claim 1, wherein the holes are die-cut holes.
3. The pad of claim 1, wherein the holes are punched holes.
4. The pad of claim 1, wherein the holes are spaced on one-half inch centers of the cover.
5. The pad of claim 1, wherein the absorbent material is an elongated poly sponge.
6. The pad of claim 1, wherein the at least one piece is at least one rectangular sheet.
7. The pad of claim 6, wherein the at least one rectangular sheet has opposite end-edges and side-edges.
8. The pad of claim 7, further comprising a pocket formed by joints along the side-edges and/or end-edges of the at least one rectangular sheet for receiving and holding the absorbent material in the pocket.
9. The pad of claim 8, wherein the joints are seams formed by stitches.

10. The pad of claim 9, wherein the pocket has the seams inward facing and smooth outer surfaces.

11. The pad of claim 7, wherein the at least one rectangular sheet has a fold between the end-edges about an axis forming a pocket having equal halves joined together along the side-edges.

12. The pad of claim 7, wherein the at least one rectangular sheet has a fold between the side-edges about an axis forming a pocket having equal halves joined together along the end-edges.

13. The pad of claim 7, wherein the at least one rectangular sheet has a fold medially along one side-edge and one end-edge forming a pocket having the opposite side-edges joined to each other.

14. The pad of claim 7, wherein the at least one rectangular sheet has a fold medially along one end-edge forming a pocket having the opposite side-edges joined together.

15. The pad of claim 6, wherein a length of the cover is about thirty seven and three-quarter inches and a width is about six and one-quarter inches.

16. The pad of claim 6, wherein a length of the cover is about eighteen and three-quarter inches and a width is about twelve and one-half inches.

17. The pad of claim 1, wherein the at least one piece is a chamois piece.



18. The pad of claim 1, further comprising plural pieces forming the cover.

19. The pad of claim 18, wherein the plural pieces are chamois pieces.

20. The pad of claim 19, wherein the chamois is sheep-skin chamois.

21. The pad of claim 18, wherein the plural pieces are of man-made chamois cloth material.

22. The pad of claim 18, wherein the plural pieces are at least four pieces forming the cover.

23. The pad of claim 22, wherein the pieces are rectangular pieces.

24. The pad of claim 23, wherein each piece is about nine and one-half inches in length.

25. The pad of claim 23, wherein each piece is about six and one-quarter inches wide.

26. The pad of claim 23, wherein the pieces are of chamois material.

27. The pad of claim 23, further comprising connections for connecting the four pieces.

28. The pad of claim 27, wherein the connections are stitched seams.

29. The pad of claim 28, wherein the seams are formed along side-edges and end-edges of the at least four rectangular pieces positioned as paired-pieces placed on top of one another for alignment of the side-edges and end-edges for receiving stitches

to join each of a pair of two smaller rectangular pieces to the other.

30. The pad of claim 28, wherein the seams are formed along two longer parallel side-edges and one end-edge.

31. The pad of claim 30, further comprising a pocket formed by the stitched seams.

32. The pad of claim 31, wherein the pocket has the connections facing inwards and smooth outer surfaces after turning the pocket inside-out.

33. The pad of claim 32, wherein the absorbent material is an elongated poly sponge inserted into the pocket.

34. The pad of claim 28, wherein the at least four pieces with the seams form a pair of elongated pieces of chamois with outward facing seams, said seams being in a center of an elongated sheet of chamois formed by the connections of the four pieces together prior to insertion of the absorbent material.

35. The pad of claim 34, further comprising a pocket formed when the at least four pieces joined by the seams are turned inside-out, and wherein the pocket has the seams facing inwards and smooth outer surfaces.

36. The pad of claim 1, wherein the cover is a pocket having inward facing joints and smooth outer surfaces.

37. The pad of claim 36, wherein the cover completely covers the absorbent material and edges of the at least one piece are joined together to prevent the absorbent material from slipping out of the pocket.

38. The pad of claim 36, wherein at least one of the edges joined together has outward facing seams.

39. An elongated wringable pad comprising an absorbent material, a cover enclosing the absorbent material, the cover comprising first and second elongated opposite side portions disposed between top and bottom elongated portions, and first and second opposite end portions disposed between the top and bottom elongated portions and between the first and second elongated side portions, the absorbent material having a complementary shape for fitting within the cover, and the cover having a plurality of openings for wringing-out contents of the pad by twisting along the length of the pad.

40. The pad of claim 39, wherein the plurality of openings are disposed in the top portion of the cover.

41. The pad of claim 39, wherein the plurality of openings are disposed in the bottom portion of the cover.

42. The pad of claim 39, wherein the plurality of openings are disposed in the first side portion of the cover.

43. The pad of claim 39, wherein the plurality of openings are disposed in the second side portion of the cover.

44. The pad of claim 39, wherein the plurality of openings are disposed in the first and second elongated side portions of the cover.

45. The pad of claim 39, wherein the plurality of openings are disposed in the top and bottom elongated portions of the cover.

46. The pad of claim 39, wherein the plurality of openings are disposed in the first and second opposite end portions.

47. The pad of claim 39, wherein the plurality of openings are disposed in the portions of the cover selected from the group consisting of the top elongated portion, the bottom elongated portion, the first elongated side portion, the second elongated side portion, the first end portion, the second end portion, and combinations thereof.

48. The pad of claim 39, wherein the cover further comprises connections.

49. The pad of claim 48, wherein the connections are seams having seam edges on the cover turned inwards towards the absorbent material and having smooth outer surfaces on all the portions of the cover.

50. The pad of claim 49, wherein the connections are on the first elongated side portion.

51. The pad of claim 49, wherein the connections are on the second elongated side portion.

52. The pad of claim 49, wherein the connections are on the first end portion.

53. The pad of claim 49, wherein the connections are on the second end portion.

54. The pad of claim 49, wherein the connections are on the top elongated portion.

55. The pad of claim 49, wherein the connections are on the bottom elongated portion.

56. The pad of claim 49, wherein the connections are disposed on the portions of the cover selected from the group consisting of the top elongated portion, the bottom elongated portion, the first elongated side portion, the second elongated side portion, the first end portion, the second end portion, and combinations thereof.

57. The pad of claim 39, wherein a length of the pad is at least three times greater than a width of the pad.

58. The pad of claim 39, wherein lengths of the first and second elongated side portions and of the top and bottom portions are at least three times greater than widths of the first and second end portions.